

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

09- xxx -SW

The City of Lipscomb)
5512 Avenue H)
Lipscomb, Alabama 35020)
_____)

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum Supp.), and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2008 Cum. Supp.).
3. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2008 Cum. Supp.) defines an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be

dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

4. Ala. Code § 22-27-4(b) (2008 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

5. Ala. Code § 22-27-10(b) (2008 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

6. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits open or unauthorized dumps.

7. On March 19, 2009, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located on the property of the City of Lipscomb (hereinafter “City of Lipscomb”) at the eastern end of 10th Street in Lipscomb, Alabama (Jefferson County). The UAD consisted of construction/ demolition waste and a small, undeterminable amount of scrap tires.

8. On March 31, 2009, the Department issued a Notice of Violation (hereinafter “NOV”) to the City of Lipscomb for operating an UAD.

9. The Department did not receive a written response to the March 31, 2009, NOV.

10. On May 20, 2009, the Department issued a Failure to Respond letter to the City of Lipscomb which requested a response to the March 31, 2009, NOV.

11. The Department did not receive a written response to the May 20, 2009, Failure to Respond letter.

CONTENTIONS

Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the City of Lipscomb; the economic benefit which delayed compliance may confer upon the City of Lipscomb; the nature, extent, and degree of success of the City of Lipscomb's efforts to minimize or mitigate the effects of such violation upon the environment; the City of Lipscomb's history of previous violations; and the ability of the City of Lipscomb to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The City of Lipscomb did not comply with any requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any threat to human health, or any threat to the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: The City of Lipscomb failed to abide by any applicable solid waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the City of

Lipscomb has realized a significant economic benefit as a result of the violations noted. However, the City of Lipscomb did not incur costs associated with the proper disposal of solid waste.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by the City of Lipscomb to mitigate any potential effects upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The City of Lipscomb has a history of similar violations at this site.

F. THE ABILITY TO PAY: The City of Lipscomb has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UAD, as follows:

| <u>Violation Type</u> | <u>Penalty Range for Violation Type</u> |
|-------------------------------|---|
| Unauthorized Solid Waste Dump | \$100 - \$25,000 |

ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b) and 22-27-7, it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, the City of Lipscomb shall pay to the Department a civil penalty in the amount of \$5,000.00 for the

violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P O Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the City of Lipscomb's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, the City of Lipscomb shall cease and desist from operating an UAD.

C. That, within thirty days of the issuance of this Order, the City of Lipscomb shall submit an abatement plan to the Department in accordance with ADEM Admin. Code Div. 335-13. This plan shall include a schedule for abatement completion. The City of Lipscomb shall document abatement activities by submitting the following to the Department within thirty days of abatement completion:

1. Time period in which the abatement activities occurred.
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before, during, and after abatement.

6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.

7. Documentation that the site has been secured to prevent any future illegal dumping.

D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the City of Lipscomb for the violations cited herein.

E. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the City of Lipscomb for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2009.

Onis "Trey" Glenn, III
Director